

IN THE UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF TENNESSEE  
 KNOXVILLE DIVISION

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 KNOX TRAILERS, INC., et al., :  
 Plaintiffs, :  
 v. : 3:20-CV-137  
 BILLY MAPLES, et al., :  
 Defendants. :  
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Chattanooga, Tennessee  
 November 1, 2022

BEFORE: THE HONORABLE TRAVIS R. MCDONOUGH  
 CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

JAMES G. CARTER, JR.  
 SHELLEY S. BREEDING  
 EMILY GRACE HARRELL  
 Breeding Olinzock Carter Crippen PC  
 800 S. Gay Street  
 Suite 1200  
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JURY TRIAL  
 EXCERPT OF PROCEEDINGS  
JURY CHARGE

1 APPEARANCES: (Continuing)

2  
3 FOR THE DEFENDANTS:

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16 Knoxville, Tennessee 37901

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1           THE COURT: Members of the jury, now it is the time  
2 for me to instruct you about the law that you must follow in  
3 deciding this case. At the start of the case I gave you some  
4 guidelines on the applicable law. I will now instruct you on  
5 the law that you should use in reaching your verdict.

6           I will start by explaining the duties and the  
7 general rules that apply in every civil case. Then I will  
8 explain some rules that you must use in evaluating particular  
9 testimony and evidence. And last I will explain the law  
10 relating to the claims made in this case. Please listen to  
11 everything -- please listen carefully to -- very carefully to  
12 everything that I say.

13           All of the instructions you are about to be given  
14 are equally important. The order in which these instructions  
15 are given has no significance. You must follow all of the  
16 instructions and not single out some and ignore others.

17           There is more than one defendant in this lawsuit.  
18 If you find that one defendant is liable, you are not required  
19 to return a verdict against all. You will decide each  
20 defendant's case separately. Each defendant is entitled to a  
21 fair and separate consideration. Unless you are instructed to  
22 the contrary, the instructions apply to the facts of each  
23 defendant's case.

24           Some of you may have taken notes during the trial.  
25 Once you retire to the jury room you may refer to your notes,

1 but only to refresh your own memory of the witnesses'  
2 testimony. You are free to discuss the testimony of the  
3 witnesses with your fellow jurors, but each of you must rely  
4 upon your own individual memory as to what a witness did or  
5 did not say. If your memory should different -- should differ  
6 from your notes, then you should rely on your memory and not  
7 on your notes. In discussing the testimony, you may not read  
8 your notes to your fellow jurors or otherwise tell them what  
9 you have written. You should never use your notes to persuade  
10 or influence other jurors. Your notes are not evidence. Your  
11 notes should carry no more weight than the unrecorded  
12 recollection of another juror.

13           You are to decide this case only from the evidence  
14 which was presented at trial. The evidence consists of  
15 (1) the sworn testimony of the witnesses who have testified,  
16 (2) the exhibits that were received and marked as evidence,  
17 and (3) any other matters that I have instructed you to  
18 consider as evidence. If I sustained an objection to any  
19 evidence or if I ordered evidence stricken, that evidence must  
20 be entirely ignored.

21           You will have to make your decision based on what  
22 you recall of the evidence. You will not have a written  
23 transcript to consult, and it is difficult and time-consuming  
24 for the reporter to read back lengthy testimony.

25           There are two kinds of evidence, direct and

1 circumstantial. Direct evidence is proof of a fact, such as  
2 testimony of a witness about what the witness personally  
3 observed. Circumstantial evidence is indirect evidence that  
4 gives you clues about what happened. Circumstantial evidence  
5 is proof of a fact or a group of facts that causes you to  
6 conclude that another fact exists. It is for you to decide  
7 whether a fact has been proved by circumstantial evidence. If  
8 you base your decision upon circumstantial evidence, you must  
9 be convinced that the conclusion you reach is more probable  
10 than any other explanation.

11           For example, if a witness testified that the witness  
12 saw it raining outside, that would be direct evidence that it  
13 was raining. If a witness testified that the witness saw  
14 someone enter a room wearing a raincoat covered with drops of  
15 water and carrying a wet umbrella, that would be  
16 circumstantial evidence from which you could conclude that it  
17 was raining. You are to consider both direct and  
18 circumstantial evidence. The law permits you to give equal  
19 weight to both, but it is for you to decide how much weight to  
20 give to any evidence. In making your decision you must  
21 consider all the evidence in light of reason, experience, and  
22 common sense.

23           Although you must consider all of the evidence, you  
24 are not required to accept all of the evidence as true or  
25 accurate. You should not decide an issue by the simple

1 process of counting the number of witnesses who have testified  
2 on each side. You must consider all the evidence in the case.  
3 You may decide that the testimony of fewer witnesses on one  
4 side is more convincing than the testimony of more witnesses  
5 on the other side.

6 Under certain circumstances you may consider the  
7 absence of evidence or a witness. You may conclude that the  
8 evidence or testimony of the witness would be adverse to that  
9 party who failed to offer it only if you find all of the  
10 following elements: (1) that it was within the power of a  
11 party to offer evidence or produce a witness on an issue in  
12 this case but that party has failed to offer the evidence or  
13 produce the witness, and (2) the evidence or witness was  
14 uniquely under the control of the party and could have been  
15 produced by the exercise of reasonable diligence, and (3) the  
16 evidence or witness was not equally available to an adverse  
17 party or the witness was likely to be biased against an  
18 adverse party because of the relationship to the party who  
19 would be expected to produce the witness, and (4) the evidence  
20 or witness's testimony would not be merely cumulative, and  
21 (5) a reasonable person under the same or similar  
22 circumstances would have offered the evidence or produced the  
23 witness if the evidence of testimony would be favorable, and  
24 (6) no reasonable excuse for the failure has been shown. You  
25 must find all of these elements before you can conclude that

1 the evidence or testimony of a witness would be adverse to a  
2 party.

3 During the course of the trial you may have heard  
4 reference made to the word interrogatory. An interrogatory is  
5 a written question that must be answered under oath in  
6 writing. You are to consider interrogatories and their  
7 answers as if the questions had been asked and answered here  
8 in court.

9 The parties have introduced evidence of certain  
10 requests for admissions. If these facts were admitted or not  
11 answered, you are to consider the facts to be true since the  
12 other party had the opportunity to deny the admission request  
13 but did not do so. Additionally you may have heard references  
14 to requests for production. In litigation the parties can  
15 request production of documents, and the opposing party must  
16 respond in writing and must produce responsive documents.

17 Certain testimony has been presented by deposition.  
18 A deposition is testimony taken under oath before the trial  
19 and preserved in writing or on a videotape. You are to  
20 consider that testimony as if it had been given in court.

21 A stipulation is an agreement between both sides  
22 that certain facts are true. When the lawyers on both sides  
23 stipulate or agree to the existence of a fact, you must,  
24 unless otherwise instructed, accept the stipulation as  
25 evidence and regard that fact as proved.

1           The parties have stipulated to the following facts  
2 that are to be treated by you as proven:

3           (1) Titan Trailers Repair and Sales, LLC, engages in  
4 business activities that are competitive with Knox Trailers,  
5 Inc.

6           (2) Billy Maples was previously employed by Knox  
7 Trailers, Inc., and Post Trailers -- excuse me -- and Post  
8 Trailer Repairs, Inc.

9           (3) Amanda Maples was previously employed by Post  
10 Trailer Repairs, Inc.

11           (4) There was a typographical error in the original  
12 Exhibit Number 22 showing Steve Fultz's company credit card  
13 expenses. El Sazon Mexicano showed \$2588. It should have  
14 been \$25.88, and has been corrected. This changed the total  
15 charges to \$14,663.69.

16           The fact that a corporation is a party must not  
17 influence you in your deliberations or in your verdict.  
18 Corporations and persons are equal in the eyes of the law.  
19 Both are entitled to the same fair and impartial treatment and  
20 to justice by the same legal standards.

21           You are the sole and exclusive judges of the  
22 credibility or believability of the witnesses who have  
23 testified in this case. You must decide which witnesses you  
24 believe and how important you think their testimony is. You  
25 are not required to accept or reject everything a witness



1 says. You are free to believe all, none, or part of any  
2 person's testimony.

3 In deciding which testimony you believe, you should  
4 rely on your own common sense and everyday experience. There  
5 is no fixed set of rules to use in deciding whether you  
6 believe a witness, but it may help you to think about the  
7 following questions:

8 (1) Was the witness able to see, hear, or be aware  
9 of the things about which the witness testified?

10 (2) How well was the witness able to recall and  
11 describe those things?

12 (3) How long was the witness watching or listening?

13 (4) Was the witness distracted in some way?

14 (5) Did the witness have a good memory?

15 (6) How did the witness look and act while  
16 testifying?

17 (7) Was the witness making an honest effort to tell  
18 the truth, or did the witness evade questions?

19 (8) Did the witness have any interest in the outcome  
20 of the case?

21 (9) Did the witness have any motive, bias, or  
22 prejudice that would influence the witness's testimony?

23 (10) How reasonable was the witness's testimony when  
24 you consider all of the evidence in the case?

25 (11) Was the witness's testimony contradicted by

1 what that witness has said or done at another time, by the  
2 testimony of other witnesses, or by other evidence?

3 The lawyers for both sides objected to some of the  
4 things that were said or done during the trial. Do not hold  
5 that against either side. The lawyers have a duty to object  
6 whenever they think that something is not permitted by the  
7 rules of evidence. Those rules are designed to make sure that  
8 both sides receive a fair trial. And do not interpret my  
9 rulings on their objections as any indication of how I think  
10 the case should be decided. My rulings were based on the  
11 rules of evidence, not on how I feel about the case. Remember  
12 that your decision must be based only on the evidence that you  
13 saw and heard here in court. Remember, nothing I have said or  
14 done during this trial was meant to influence your decision in  
15 any way.

16 Throughout the trial you heard references to a  
17 preliminary injunction I issued on May 21, 2021. You are to  
18 make your own decisions on the merits of Knox Trailers' and  
19 Post Trailer's claims. You are not to rely on my prior  
20 decision. The purpose of a preliminary injunction is simply  
21 to preserve the status quo until the parties can have a trial  
22 on the merits. The standards used in a preliminary injunction  
23 are less demanding and the evidence heard is less complete  
24 than at trial. A party is not required to prove its case in  
25 full at a preliminary injunction hearing, and the findings

1 made by a court granting the preliminary injunction are not  
2 binding at trial on the merits. The Court's prior decision to  
3 issue a preliminary injunction should not influence your  
4 decision in this case. You should consider all of the  
5 evidence presented at trial and come to your own conclusions  
6 on the merits of the plaintiffs' claims.

7 An expert witness was asked to assume that certain  
8 facts were true and to give an opinion based on that  
9 assumption. This is called a hypothetical question. You must  
10 determine if any fact assumed by the witness has not been  
11 established by the evidence and the effect of that omission,  
12 if any, upon the value of the opinion.

13 You may conclude that a witness deliberately lied  
14 about a fact that is important to your decision in the case.  
15 If so, you may reject everything that witness said. On the  
16 other hand, if you decide that the witness lied about some  
17 things but told the truth about others, you may accept the  
18 part you decide is true and you may reject the rest.

19 There may be discrepancies or differences within a  
20 witness's testimony or between the testimony of different  
21 witnesses. This does not necessarily mean that a witness  
22 should be disbelieved. Sometimes when two people observe an  
23 event they will see or hear it differently. Sometimes a  
24 witness may have an innocent lapse of memory. Witnesses may  
25 testify honestly but simply may be wrong about what they

1 thought they saw or remembered. You should consider whether a  
2 discrepancy relates to an important fact or only to an  
3 unimportant detail.

4 Sometimes silence may be an admission. Under  
5 certain circumstances you may conclude that a party admitted  
6 or agreed with something that was said in that party's  
7 presence. Such evidence should be received with caution. For  
8 you to draw the conclusion that a party adopted another  
9 statement or believed it to be true, you must find all of the  
10 following elements: (1) that the party heard and understood  
11 the statement, and (2) that there was a reasonable opportunity  
12 to reply, and (3) that the party was in such physical and  
13 mental condition that the party reasonably could be expected  
14 to reply, and (4) that the statement was made under such  
15 circumstances that it would normally call for an answer, and  
16 (5) that the party failed to respond or made an evasive  
17 response to the statement. You must find all of these  
18 elements before you can consider the party's silence or  
19 evasive answer to be an admission.

20 Usually witnesses are not permitted to testify as to  
21 opinions or conclusions. However, a witness who has  
22 scientific, technical, or other specialized knowledge, skill,  
23 experience, training, or education may be permitted to give  
24 testimony in the form of an opinion. Those witnesses are  
25 often referred to as expert witnesses. You should determine

1 the weight that should be given to each expert's opinion and  
2 resolve conflicts in the testimony of different expert  
3 witnesses. You should consider: (1) the education,  
4 qualifications, and experience of the witnesses, and (2) the  
5 credibility of the witnesses, and (3) the facts relied upon by  
6 the witness -- the witnesses to support the opinions, and  
7 (4) the reason -- the reasoning used by the witnesses to  
8 arrive at the opinion. You should consider each expert  
9 opinion and give it the weight, if any, that you think it  
10 deserves. You are not required to accept the opinion of any  
11 expert.

12 In reaching your verdict you may consider only the  
13 evidence that was admitted. Remember that any questions,  
14 objections, statements, or arguments made by the attorneys  
15 during trial are not evidence. Testimony that you have been  
16 instructed to disregard is not evidence and must not be  
17 considered. If evidence has been received only for a limited  
18 purpose, you must follow the limiting instructions I have  
19 given you.

20 You are free to decide the case -- excuse me. You  
21 are to decide the case solely on the evidence received at  
22 trial. Although you must only consider the evidence in this  
23 case in reaching your verdict, you are not required to set  
24 aside your common knowledge. You are permitted to weigh the  
25 evidence in the light of your common sense, observations, and

1 experience.

2 In this action Knox Trailers and Post Trailer have  
3 the burden of establishing by a preponderance of the evidence  
4 the following issues:

5 (1) Billy Maples breached his fiduciary duties to  
6 Knox Trailers.

7 (2) Billy Maples and Amanda Maples breached their  
8 fiduciary duties to Post Trailer.

9 (3) Titan Trailers and Billy Maples unfairly  
10 competed with Knox Trailers.

11 (4) Titan Trailers and Billy Maples misappropriated  
12 Knox Trailers' trade secrets.

13 (5) Titan Trailers and Billy Maples misappropriated  
14 Post Trailer's trade secrets.

15 (6) Titan Trailers and Billy Maples converted Knox  
16 Trailers' property.

17 (7) Titan Trailers and Billy Maples converted Post  
18 Trailer's property.

19 (8) Titan Trailers and Billy Maples engaged in a  
20 conspiracy against Knox Trailers.

21 And (9) Titan Trailers and Billy Maples engaged in a  
22 conspiracy against Post Trailer.

23 The term preponderance of the evidence means that  
24 amount of evidence that causes you to conclude that an  
25 allegation is probably true. To prove an allegation by a

1 preponderance of the evidence, a party must convince you that  
2 the allegation is more likely true than not true. If the  
3 evidence on a particular issue is equally balanced, that issue  
4 has not been proven by a preponderance of the evidence and the  
5 party having the burden of proving that issue has failed. You  
6 must consider all the evidence on each issue.

7           A principal can be held responsible for the acts or  
8 omissions of the principal's agent. A person who is  
9 authorized to act for another person or in place of another  
10 person is an agent of that person. A person may be an agent  
11 whether or not payment was received for services of the  
12 authorized act. For purposes of this case, the term agent  
13 includes an employee. The person who authorizes the agent to  
14 act is called a principal. For the purposes of this case, the  
15 term principal includes an employer.

16           In order to be considered the act of the principal,  
17 the act of the agent must be within the scope of the agent's  
18 authority or employment. It is not necessary that a  
19 particular act or failure to act be expressly authorized by  
20 the principal to bring it within the scope of the agent's  
21 authority or employment. Conduct is within the scope of the  
22 agent's authority or employment if it occurs while the agent  
23 is engaged in the duties that the agent was authorized or  
24 employed to perform and if the conduct relates to those  
25 duties. Conduct for the benefit of the principal that is

1 incidental to, customarily connected with, or reasonably  
2 necessary to perform an authorized act is within the scope of  
3 the agent's authority or employment.

4           You are to decide whether the employee was acting  
5 within the scope of employment. To determine whether an act  
6 or omission occurred within the scope of employment you must  
7 weigh and balance the facts and circumstances of this case.  
8 Conduct of an employee is within the scope of employment if  
9 (a) it is of the kind the employee is employed to perform,  
10 (b) it occurs substantially within the authorized time and  
11 place limits, and (c) it is motivated at least in part by a  
12 purpose to serve the employer. An employee's act is not  
13 within the scope of employment if it is different in kind from  
14 that authorized, far beyond the authorized time and place  
15 limits, or too little motivated by a purpose to serve the  
16 employer.

17           In some circumstances an employer may be liable  
18 although the employee's act is not expressly authorized. To  
19 determine whether an employee's authorized and unauthorized --  
20 let me start over, excuse me. To determine whether an  
21 employee's unauthorized conduct is nevertheless so similar to  
22 or incidental to the authorized conduct as to be within the  
23 scope of employment, you may consider the following matters of  
24 fact: (a) whether the act is one commonly done by such  
25 employees, (b) the time, place, and purposes of the act,



1 (c) the previous dealings between the employer and the  
2 employee, (d) the extent to which the business of the employer  
3 is apportioned between different employees, (e) whether the  
4 act is outside the enterprise of the employer or, if within  
5 the enterprise, has not been entrusted to any employee,  
6 (f) whether the employer has reason to expect such an act will  
7 be done, (g) the similarity in quality of the act done to the  
8 act authorized, (h) whether the employer has furnished the  
9 employee with the instrumentality by which the harm is done,  
10 (i) the extent of departure from the normal method of  
11 accomplishing an authorized result, and (j) whether the act is  
12 seriously criminal.

13           Knox Trailers and Post Trailer claim that Billy  
14 Maples and Titan Trailers misappropriated a trade secret owned  
15 by Knox Trailers and Post Trailer under both the federal  
16 Defend Trade Secrets Act and the Tennessee Uniform Trade  
17 Secrets Act. The elements of these claims are substantially  
18 the same. To prove each claim, Knox Trailers or Post Trailer  
19 must prove the following acts by a preponderance of the  
20 evidence: (1) the existence of a trade secret, (2) defendant  
21 misappropriated the trade secret, and (3) the misappropriation  
22 resulted in detriment to Knox Trailers or Post Trailer.

23           Let me talk to you about the first element, the  
24 existence of a trade secret. A trade secret means all forms  
25 and types of financial, business, scientific, technical,

1 economic, or engineering information that the owner thereof  
2 has taken reasonable measures to keep secret if the  
3 information derives independent economic value, actual or  
4 potential, from not being generally known to and not being  
5 readily ascertainable through proper means by another person  
6 who can obtain economic value from the disclosure or use of  
7 the information. A trade secret may include patterns, plans,  
8 compilations, program devices, formulas, designs, prototypes,  
9 methods, techniques, processes, procedures, programs, or  
10 codes. A trade secret may be tangible or intangible. A trade  
11 secret does not have to be stored, compiled, or memorialized;  
12 but, if it is, it does not have to be stored, compiled, or  
13 memorialized in any particular manner, such as physically,  
14 electronically, graphically, photographically, or in writing.

15 To prove a trade secret, Knox Trailers or Post  
16 Trailer must establish the following by a preponderance of the  
17 evidence:

18 (1) The compilation of information stored in the  
19 SouthWare databases is not generally known to another person  
20 who can obtain economic value from the disclosure or use of  
21 the information.

22 (2) Another person cannot readily discover the  
23 compilation of information stored in the SouthWare databases  
24 through proper means.

25 (3) The compilation of information stored in the

1 SouthWare databases derives independent economic value, actual  
2 or potential, from not being known to and not being readily  
3 ascertainable through proper means by another person who can  
4 obtain economic value from the disclosure or use of the  
5 information.

6 And (4) Knox Trailers or Post Trailer has taken  
7 reasonable steps to protect the secrecy of the compilation of  
8 information stored in the SouthWare databases.

9 All right. The second element, misappropriation.  
10 Knox Trailers and Post Trailer claim that the defendants  
11 acquired, disclosed, or used the compilation of information  
12 stored in the SouthWare databases without the right to do so.  
13 This is called misappropriation.

14 For Knox Trailers or Post Trailer to prove that  
15 defendants misappropriated the compilation of information  
16 stored in the SouthWare databases, Knox Trailers or Post  
17 Trailer must prove the following by a preponderance of the  
18 evidence:

19 (1) Defendants acquired, disclosed, or used the  
20 compilation of information stored in the SouthWare databases  
21 without Knox Trailers's or Post Trailer's express or implied  
22 consent.

23 (2) Defendant knew or should have known that the  
24 compilation of information stored in the SouthWare databases  
25 (a) was derived from or through a third person who used

1 improper means to acquire the trade secret, (b) was acquired  
2 under circumstances giving rise to a duty to maintain the  
3 secrecy of the compilation of information stored in the  
4 SouthWare databases or limit the use of the compilation of  
5 information stored in the SouthWare databases, or (c) was  
6 derived from or through a third person who was under a duty to  
7 maintain secrecy of or limit the use of compilation of  
8 information stored in the SouthWare databases.

9           Improper means may include theft, bribery,  
10 misrepresentation, breach or inducement of a breach of duty to  
11 maintain secrecy, and espionage through electronic or other  
12 means. Each act of acquiring, disclosing, or using  
13 compilation of the information stored in the SouthWare  
14 databases may constitute a separate act of misappropriation.

15           Expressed consent -- express consent, excuse me, is  
16 consent that is clearly and unmistakably stated.

17           Implied consent is consent that is inferred from  
18 one's conduct rather than from one's direct expression.

19           And the third element, detriment to Knox Trailers or  
20 Post Trailer. Knox Trailers or Post Trailer must show that  
21 the misappropriation resulted in its detriment. Post Trailer  
22 does not seek monetary damages for this claim; however, you  
23 still must decide whether Post Trailer has met its burden to  
24 prove the three elements listed above.

25           Before this case reached trial, the Court found

1 Titan Trailers and Billy Maples engaged in the following  
2 inappropriate discovery-related conduct: Maples and Titan  
3 concealed the USB drive containing the databases, Maples and  
4 Titan made misleading statements to the Court, and Maples and  
5 Titan made misleading statements to the plaintiffs. You may  
6 consider these findings in deciding whether Maples and Titan  
7 misappropriated the alleged trade secrets. To the extent  
8 plaintiffs can show that the databases are trade secrets, you  
9 may infer but are not required to infer that Titan and Maples  
10 misappropriated such trade secrets.

11           Knox Trailers claims that Billy Maples breached his  
12 fiduciary duty of loyalty. Post Trailer claims that Billy  
13 Maples and Amanda Maples each breached their fiduciary duty of  
14 loyalty. The duty of loyalty requires an employee to act  
15 solely for the benefit of the employer in matters within the  
16 scope of his or her employment. The employee must not engage  
17 in conduct that is adverse to the employer's interests. This  
18 includes a duty not to compete with the employer during the  
19 employment relationship. The law allows an employee to make  
20 preparations to compete if those preparations do not violate  
21 this duty of loyalty. An employee may announce his future  
22 departure to a competitor but may not solicit customers for  
23 the benefit of the competitor.

24           In order to prevail on its claim against defendants  
25 for breach of their fiduciary duty and loyalty as an employee,

1 plaintiffs must prove each of the following elements by a  
2 preponderance of the evidence: (1) an employment relationship  
3 existed between a plaintiff and a defendant, (2) a defendant  
4 breached his or her duty of loyalty, and (3) a plaintiff was  
5 harmed or a defendant benefited because of this breach. You  
6 may not consider the alleged misappropriation of the SouthWare  
7 database or materials or information from it or other  
8 documents from Knox Trailers or Post Trailer in deciding this  
9 claim. This claim only involves other alleged acts.

10           Knox Trailers brings a claim for unfair competition  
11 against Billy Maples and Titan Trailers. To succeed on a  
12 claim for unfair competition Knox Trailers must prove by a  
13 preponderance of the evidence that: (1) a defendant engaged in  
14 conduct that amounts to a recognized tort and (2) that the  
15 tort deprived the plaintiff of customers or other prospects.  
16 In this case the possible recognized torts that may give rise  
17 to a claim for unfair competition are the breach of the  
18 fiduciary duty of loyalty or conversion. You may not consider  
19 the alleged misappropriation of the SouthWare database or  
20 materials or information from it or other documents from Knox  
21 Trailers or Post Trailer in deciding this claim. This claim  
22 only involves other alleged acts.

23           Knox Trailers and Post Trailer assert conversion  
24 claims against Billy Maples and Titan Trailers. A conversion  
25 is any assumption of control over property that is

1 inconsistent with the rights of the owner. To prove a  
2 conversion claim, Knox Trailers or Post Trailer must show by a  
3 preponderance of the evidence that a defendant either (1) used  
4 or enjoyed the personal property of a plaintiff without the  
5 plaintiff's consent or (2) destroyed or intentionally  
6 exercised dominion over the property of a plaintiff by  
7 excluding or defying the plaintiff's right, or (3) withheld  
8 the personal property from a plaintiff under a claim of title  
9 inconsistent with the plaintiff's claim of title.

10 If personal property that has been entrusted to  
11 another is used in a different manner or for a different  
12 purpose or for a longer time than was agreed upon by the  
13 parties, the person who received the personal property is  
14 guilty of conversion. In that case the person to whom the  
15 property is entrusted is answerable for all damages, including  
16 a loss that due care could not have prevented. You may not  
17 consider the alleged misappropriation of the SouthWare  
18 database or materials or information from it or other  
19 documents from Knox Trailers or Post Trailer in deciding this  
20 claim. This claim only involves other alleged acts.

21 Knox Trailers and Post Trailer assert claims for  
22 civil conspiracy against Billy Maples and Titan Trailers. If  
23 you have found that breach of fiduciary duty of loyalty,  
24 unfair competition, or conversion was committed by these  
25 defendants, then you are to consider whether these defendants

1 engaged in a civil conspiracy to commit breach of fiduciary  
2 duty of loyalty, unfair competition, or conversion.

3 For you to find that these defendants engaged in a  
4 civil conspiracy, Knox Trailers and Post Trailer must prove by  
5 a preponderance of the evidence all of the following: (1) a  
6 common design between a defendant and another person, each  
7 having the intent and knowledge of the other's intent, (2) to  
8 accomplish, by a concerted action, an unlawful purpose or a  
9 lawful purpose by an unlawful means, (3) an overt act in  
10 furtherance of the conspiracy, and (4) resulting injury.

11 A conspiracy cannot exist between a corporation and  
12 its officer, director, employee, or other agent when the  
13 conduct is a single act by a corporation acting through its  
14 officer, director, employee, or -- and other agent, each  
15 acting within the scope of his or her employment. Conduct of  
16 a person is within the scope of employment if (a) it is the  
17 kind the person is employed to perform, (b) it occurs  
18 substantially within the authorized time and place limits, and  
19 (c) it is motivated, at least in part, by a purpose to serve  
20 the employer. You may not consider the alleged  
21 misappropriation of the SouthWare database or materials or  
22 information from it or other documents from Knox Trailers or  
23 Post Trailer in deciding this claim. This claim only involves  
24 other alleged acts.

25 If under the Court's instructions you find that the



1 plaintiffs are entitled to damages as a result of defendants'  
2 breach of fiduciary duty, unfair competition, conversion, or  
3 civil conspiracy, then you must award plaintiffs damages that  
4 will reasonably compensate the plaintiffs for claimed loss or  
5 harm which has been proven by a preponderance of the evidence,  
6 provided you also find it was or will be suffered by the  
7 plaintiffs and was legally caused by the act or omission or  
8 condition upon which you base your finding of liability.  
9 Compensatory damages do not include Titan Trailers' profit,  
10 only the damage suffered by Knox Trailers and Post Trailer.  
11 Further, these damages do not include Knox Trailers' or Post  
12 Trailer's lost profit or loss of the business's value.  
13 Rather, these damages include the plaintiffs's lost revenue  
14 and extra costs.

15           You may not consider the alleged misappropriation of  
16 the SouthWare database or materials or information from it or  
17 other documents from Knox Trailers or Post Trailer in deciding  
18 the breach of fiduciary duty, unfair competition, conversion,  
19 and civil conspiracy claims. Rather, the Court has provided  
20 categories of damages claimed by plaintiffs for each cause of  
21 action in order to direct your consideration of damages.

22           If under the Court's instructions you find that the  
23 defendants misappropriated plaintiffs' trade secrets and you  
24 find by a preponderance of the evidence that the plaintiffs  
25 were harmed as a result of that misappropriation, you must

1 award plaintiffs damages for any unjust enrichment caused by  
2 the misappropriation of the trade secret that is not addressed  
3 in computing damages for actual loss.

4           Plaintiffs will not be entitled to duplicative  
5 damages and will later elect which damages to recover to avoid  
6 double recovery. If you find plaintiffs are entitled to  
7 damages on a claim, you should award full damages on that  
8 claim. Do not limit your damages amount on one claim due to  
9 the same or similar damages awarded on other claims.

10           In determining an appropriate amount of compensatory  
11 damages, you are not to assess an amount reflecting interest.  
12 The law allows the plaintiffs to recover prejudgment interest  
13 on a compensatory damages award in certain circumstances.  
14 Assuming you find the defendants liable to the plaintiffs, the  
15 Court will determine whether to award prejudgment interest at  
16 a later date, therefore you should be careful not to make any  
17 award for such interest.

18           The verdict you return to the Court must represent  
19 the considered judgment of each juror. In order to return a  
20 verdict it is necessary that each juror agree to that verdict.  
21 Your verdict must be unanimous. It is your duty to consult  
22 with one another and to reach an agreement if you can do so  
23 without violence to the -- to individual judgment. Each of  
24 you must decide the case for yourself but do so only after an  
25 impartial consideration of the evidence with your fellow

1 jurors. In the course of your deliberations do not hesitate  
2 to reexamine your own views and to change your opinion if you  
3 are convinced that it is not correct. But do not surrender  
4 your honest conviction as to the weight or effect of evidence  
5 solely because of the opinion of your fellow jurors or for the  
6 mere purpose of returning a verdict.

7 I have prepared a verdict form for you to use to  
8 record your verdict. Finally, ladies and gentlemen, we come  
9 to the point where we will discuss the form of your verdict  
10 and the process of your deliberations. You will be taking  
11 with you to the jury room a verdict form that will reflect  
12 your findings. Nothing said in these instructions and nothing  
13 in any verdict form prepared for your convenience is meant to  
14 suggest or convey in any way or manner any suggestion or hint  
15 as to what verdict I think you should find. What the verdict  
16 shall be is your sole and exclusive duty and responsibility.

17 You will be selecting a foreperson after you retire  
18 to the jury room. That person will preside over your  
19 deliberations and be your spokesperson here in court. When  
20 you have completed your deliberations, your foreperson will  
21 fill in and sign the verdict form. Your verdict must  
22 represent the considered judgment of each of you. In order to  
23 return a verdict, it is necessary that each of you agree to  
24 that verdict; that is, your verdict must be unanimous. It is  
25 your duty as jurors to consult with one another and to

1 deliberate with a view to reaching an agreement if you can do  
2 so without violence to individual judgment. Each of you must  
3 decide the case for yourself but only after an impartial  
4 consideration of the evidence in the case with your fellow  
5 jurors.

6 In the course of your deliberations do not hesitate  
7 to reexamine your own views and change your opinion if  
8 convinced it is erroneous. But do not surrender your honest  
9 conviction as to the weight or effect of the evidence solely  
10 because of the opinion of your fellow jurors or for the mere  
11 purpose of returning a verdict. Remember at all times that  
12 you are not partisans, you are judges, judges of the facts.  
13 Your sole interest is to seek the truth from the evidence in  
14 this case.

15 You have heard the testimony of many witnesses. No  
16 transcript of witness testimony is readily available. In your  
17 deliberations you must rely on your individual and collective  
18 recollection as to all the proof, including the testimony of  
19 witnesses.

20 We will be sending with you to the jury room all of  
21 the exhibits in the case. You may have not seen all of these  
22 previously, and they will be there for your review and  
23 consideration.

24 You may take a break before you begin the case;  
25 however, you may not deliberate at any time unless all of you

1 are present together in the jury room.

2           Some of you have taken notes. I remind you that  
3 these are for your own individual use only and are to be used  
4 by you only to refresh your recollection about the case. They  
5 are not to be shown to others or otherwise used as a basis for  
6 your discussion about the case.

7           You will take the verdict form to the jury room, and  
8 when you have reached a unanimous agreement as to your verdict  
9 you will have your foreperson fill it in, date and sign it,  
10 and then return to the courtroom.

11           If during your deliberations you should desire to  
12 communicate with the Court, please reduce your message or  
13 question to writing signed by the foreperson and pass the note  
14 to the clerk, who will bring it to my attention. No member of  
15 the jury shall ever attempt to communicate with me by any  
16 means other than a signed writing. I will never communicate  
17 with any member of the jury on any subject touching on the  
18 merits of the case otherwise than in writing or orally here in  
19 open court. I will then respond as promptly as possible,  
20 either in writing or by having you return to the courtroom so  
21 that I can address you orally.

22           I caution you, however, with regard to any message  
23 or question you might send, that you are never to reveal to  
24 any person, not even to me, how the jury stands, numerically  
25 or otherwise, on the questions before you until you have

1 reached a unanimous verdict.

2           You will now retire and select one of you to be the  
3 presiding juror for your deliberations. As soon as all of you  
4 have agreed upon a verdict, you will return to this room to  
5 report your verdict.

6           You may deliberate only when all of you are present  
7 in the jury room. You may not resume your deliberations after  
8 any breaks until all of you have returned to the jury room.

9           All right, Counsel, are there any objections to my  
10 reading of those instructions?

11           MS. BREEDING: No objections from plaintiffs.

12           MR. SHIPE: No, Your Honor.

13           THE COURT: Okay.

14           All right, Ms. Camp, will you show the first six  
15 jurors to the jury room and our two alternates to the other  
16 room.

17           To those who will serve as alternates, be patient.  
18 If we need you, we will tell you. But don't -- don't  
19 deliberate or discuss the case while you're in the jury room.

20           All right. Ms. Camp. Thank you.

21           (The jury exited the courtroom, and the proceedings  
22 continued as follows:)

23           THE COURT: All right. Is there any -- I caught  
24 one -- I caught -- just we failed to take out some footnote  
25 numbers on Page 19. I'm going to take those out. Did anybody

1 else see any typos as we went through it?

2 MS. BREEDING: There was one typo I thought you had  
3 caught that you --

4 THE COURT: I thought it was a typo, and then  
5 Mr. Goodman here has convinced me that it -- that there's not a  
6 typo.

7 MS. BREEDING: Okay. I don't remember. I thought it  
8 was a typo, but --

9 THE COURT: Yeah.

10 MS. BREEDING: -- I trust Mr. Goodman.

11 THE COURT: Okay. We'll take out those footnote  
12 numbers. Okay.

13 All right. Everybody stay close. You don't have to  
14 stay in the courthouse, but be within five or ten minutes,  
15 please. Make sure Ms. Camp has your cell phones, and we'll  
16 call you if we hear from the jury. They will, you know, take  
17 lunch, for example, whenever they want to. So we'll just let  
18 them pilot the ship until they need us. Okay? Anything else?

19 MS. BREEDING: Your Honor, I --

20 THE COURT: Yes.

21 MS. BREEDING: My only question is, I don't know when  
22 you want to take up the motion to quash. I know I told Wayne  
23 Ritchie I would be in touch with him.

24 THE COURT: Yeah. Well, let's -- give me -- not yet.  
25 That's the answer right now.

1 MS. BREEDING: No, that's fine. I just wanted to  
2 give him an update. I just wanted to make sure I was in touch  
3 with him.

4 THE COURT: Let me say one thing. I'm sure you've  
5 talked to Ms. Camp about the JERS system for the exhibits. I  
6 want to remind you it's the lawyers' responsibility to ensure  
7 that the correct exhibits are loaded into the JERS system.  
8 I know we agreed to have some redactions done. So if what's in  
9 the JERS system is not the record, okay, I want everybody to  
10 understand that, it's what -- it's the copy that the jury sees.  
11 So if we send back into JERS the wrong exhibit or an exhibit  
12 that's not redacted appropriately, that's what they're going to  
13 see. And we're not going to redo this trial because somebody  
14 missed something. So look at all -- everything that Ms. Camp  
15 is about to send back and make sure it's the right version. If  
16 there's disagreement, call me back, and we'll talk about it.  
17 Okay? But it's your responsibility to make sure that's right.

18 All right. We're in recess.

19 MR. SHIPE: Thank you, Your Honor.

20 MS. BREEDING: Thank you.

21 (Recess for deliberations.)

22 END OF EXCERPT

23

24

25



1 I, Elizabeth B. Coffey, do hereby certify that I  
2 reported by mechanical stenography the proceedings held on this  
3 date in the above-styled cause, and that this transcript,  
4 produced by computer, is an accurate record of said  
5 proceedings.

6 s/Elizabeth B. Coffey

7 Elizabeth B. Coffey,  
8 Official Court Reporter  
9 United States District Court  
10 Eastern District of Tennessee  
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